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DEC 10 2008

In re Application of Ekpar	:	
Application No. 10/728,609	:	Decision on Petition
Filing Date: December 3, 2003	:	
For: Method and Apparatus for Creating	:	
Interactive Virtual Tours	:	

This is a decision on the petition under 37 CFR 1.181 filed July 22, 2008, requesting the Office withdraw the holding of abandonment.

The petition is **granted**.

On April 24, 2007, petitioner filed an amendment in response to a non-final Office action.

Office PALM (a computer program) records indicate a Notice of Informal or Non-Responsive Amendment was mailed May 10, 2007.

The Office did not receive a reply to the May 10, 2007 Notice.

On January 2, 2008, the Office mailed a Notice of Abandonment stating the application was abandoned because the Office never received a reply to the May 10, 2007 Notice.

Petitioner contends the May 10, 2007 Notice was never received.

In the *absence of any irregularity* in the mailing of the Office action, there is a strong presumption that the Office action was properly mailed and delivered to the address of record. The Office need not determine if the evidence supplied is sufficient to overcome such a presumption because the record does indicate an irregularity in the processing and/or mailing of the May 10, 2007. Specifically, the Electronic Image File Wrapper, which is the official record for the application, does not contain a copy of the May 10, 2007 Notice which indicates the Notice may not have been mailed. In addition, since the Notice is not in the file, the Office is unable to verify the Notice, if mailed, was mailed to the correct address.

For the preceding reasons, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

Technology Center Art Unit 2622 will be informed of the instant decision. Thereafter, the Technology Center's technical support staff or the examiner will mail a new copy of the Notice of Informal or Non-Responsive Amendment originally "mailed" on May 10, 2007. The time period for responding to the new Notice will be set to run from the mailing date of the new Notice.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



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